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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 948 and Part 980

[Doc. No. AMS-FV-13-0001; FV13-948-1 FIR]

**Irish Potatoes Grown in Colorado; Modification of the
General Cull and Handling Regulation for Area No. 2**

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Affirmation of interim rule as final rule.

SUMMARY: The Department of Agriculture (USDA) is adopting, as a final rule, without change, an interim rule that modified the size requirements for potatoes handled under the Colorado potato marketing order, Area No. 2 (order). The order regulates the handling of Irish potatoes grown in Colorado and is administered locally by the Colorado Potato Administrative Committee, Area No. 2 (Committee). The interim rule revised the 1-inch minimum to 1¼-inch maximum diameter size allowance for U.S. Commercial and better grade potatoes contained in the order's handling regulation for Area No. 2 to ¾-inch minimum to 1½-inch maximum diameter. In addition, this action revised the minimum size requirement under the order's general cull regulation to ¾-inch diameter. As required under section 8e of the Agricultural Marketing Agreement Act of 1937, this action

also revised the size requirements for imported round type potatoes, other than red-skinned varieties. This change is expected to facilitate the handling and marketing of the Area No. 2 potato crop; provide producers, handlers, and importers with increased returns; and offer consumers increased potato purchasing options.

DATES: Effective [INSERT DATE 1 DAY AFTER THE DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Sue Coleman, Marketing Specialist, or Gary D. Olson, Regional Director, Northwest Marketing Field Office, Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS, USDA; Telephone: (503) 326-2724, Fax: (503) 326-7440, or E-mail: Sue.Coleman@ams.usda.gov or GaryD.Olson@ams.usda.gov.

Small businesses may obtain information on complying with this and other marketing order and agreement regulations by viewing a guide at the following website: <http://www.ams.usda.gov/MarketingOrdersSmallBusinessGuide>; or by contacting Jeffrey Smutny, Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS, USDA; 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250-0237; Telephone: (202) 720-2491, Fax: (202) 720-8938, or E-mail: Jeffrey.Smutny@ams.usda.gov.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 97 and Marketing Order No. 948, both as amended (7 CFR part 948), regulating the handling of Irish potatoes grown in Colorado and hereinafter referred to as the "order". The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act."

This rule is also issued under section 8e of the Act, which provides that whenever certain specified commodities, including potatoes, are regulated under a Federal marketing order, imports of these commodities into the United States are prohibited unless they meet the same or comparable grade, size, quality, or maturity requirements as those in effect for the domestically produced commodities.

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

The handling of potatoes grown in Area No. 2 of Colorado is regulated by 7 CFR part 948. Prior to this change, the smallest potatoes that could be shipped outside the state of Colorado under the order were 1-inch to 1¼-inch diameter potatoes that met or exceeded the requirements of the U.S. Commercial grade. Potatoes

measuring less than 1-inch could not be shipped outside the state, regardless of grade. This restrictive requirement precluded the Colorado Area No. 2 handlers from supplying an emerging market for smaller size U.S. Commercial grade potatoes. Therefore, this rule continues in effect the interim rule that relaxed the allowable minimum diameter for U.S. Commercial and better grade potatoes to $\frac{3}{4}$ -inch, which is in line with the minimum size requirements contained in the handling regulations of the other domestic potato marketing orders.

Additionally, prior to this change, the order's general cull regulation required all potatoes handled under the order to meet the minimum requirements of the U.S. No. 2 grade, or be greater than $1\frac{1}{2}$ -inches in diameter. For marketing purposes, the general cull regulations need to be consistent with the handling regulations. Therefore, this rule also continues in effect the interim rule that relaxed the minimum size requirement under the order's general cull regulation to $\frac{3}{4}$ -inch diameter.

Imported potatoes are subject to regulations specified in 7 CFR part 980. Under those regulations, imported potatoes must meet the same or comparable grade, size, quality, and maturity requirements as specified for

domestic potatoes under the order. Therefore, the relaxation of the size requirements effectuated by this rule for domestic potatoes covered by the order likewise relaxes the size requirements for U.S. Commercial and better grade round type potatoes, other than red-skinned varieties, that are imported into the United States. Importers may now ship Creamer size ($\frac{3}{4}$ -inch minimum to $1\frac{5}{8}$ -inch maximum diameter) U.S. Commercial and better grade round type potatoes, other than red-skinned varieties, into the United States.

In an interim rule (Doc. No. AMS-FV-13-0001; FV13-948-1 IR) published in the Federal Register on June 14, 2013, and effective on June 15, 2013 (78 FR 35743), § 948.126 was amended by changing the minimum diameter for potatoes handled under the order from $1\frac{1}{2}$ -inch to $\frac{3}{4}$ -inches. Likewise, § 948.386 was modified by relaxing the size allowance for U.S. Commercial and better grade potatoes from 1-inch minimum to $1\frac{1}{4}$ -inch maximum diameter to $\frac{3}{4}$ -inch minimum to $1\frac{5}{8}$ -inch maximum diameter (Creamer size).

Final Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601-612), the Agricultural Marketing Service (AMS) has considered the economic impact

of this action on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

There are approximately 80 handlers of Colorado Area No. 2 potatoes subject to regulation under the order and approximately 180 producers in the regulated production area. In addition, there are approximately 571 potato importers. Small agricultural service firms are defined by the Small Business Administration as those having annual receipts of less than \$7,000,000, and small agricultural producers are defined as those having annual receipts of less than \$750,000. (13 CFR 121.201)

During the 2011-2012 marketing year, the most recent full marketing year for which statistics are available, 15,072,963 hundredweight of Colorado Area No. 2 potatoes were inspected under the order and sold into the fresh market. Based on an estimated average f.o.b. price of

\$12.60 per hundredweight, the Committee estimates that 66 Area No. 2 handlers, or about 83 percent, had annual receipts of less than \$7,000,000. In view of the foregoing, the majority of Colorado Area No. 2 potato handlers may be classified as small entities.

In addition, based on information provided by the National Agricultural Statistics Service, the average producer price for the 2011 Colorado fall potato crop was \$10.70 per hundredweight. Multiplying \$10.70 by the shipment quantity of 15,072,963 hundredweight yields an annual crop revenue estimate of \$161.281 million. Therefore, the average annual fresh potato revenue for each of the 180 Colorado Area No. 2 potato producers is calculated to be approximately \$896,000 (\$161.281 million divided by 180), which is greater than the SBA threshold of \$750,000. Consequently, on average, many of the Area No. 2 Colorado potato producers may not be classified as small entities.

Information from the Foreign Agricultural Service, USDA, indicates that the dollar value of imported fresh potatoes averaged \$128.962 million over the past five years, ranging from a low of approximately \$106.502 million in 2012 to a high of approximately \$155.358 million in

2008. Using these values, it is estimated that the majority of the 571 potato importers have annual receipts of less than \$7 million and may be classified as small entities.

This rule continues in effect the action that relaxed the size allowance for U.S. Commercial and better grade potatoes in the order's handling regulation and modified the size requirement in the order's general cull regulation. Prior to this action, the smallest size range allowed to be handled under the order was 1-inch minimum diameter to 1 $\frac{3}{4}$ -inch maximum diameter if the potatoes were otherwise U.S. Commercial or better grade. As a result of this rule, Creamer size ($\frac{3}{4}$ -inch to 1 $\frac{5}{8}$ -inch diameter) U.S. Commercial and better grade potatoes may now be handled under the order. Additionally, the minimum size requirement under the order's general cull regulation was changed from 1 $\frac{1}{2}$ -inch to $\frac{3}{4}$ -inch diameter. All other size requirements in the order's handling regulation remain unchanged. Authority for this action is contained in §§ 948.20, 948.21, and 948.22.

This relaxation is expected to benefit the producers, handlers, importers, and consumers of potatoes by allowing a greater quantity of fresh potatoes to enter the market.

This anticipated increase in volume is expected to translate into greater returns for producers, handlers, and importers, and more purchasing options for consumers.

In accordance with the Paperwork Reduction Act of 1995, (44 U.S.C. Chapter 35), the order's information collection requirements have been previously approved by the Office of Management and Budget (OMB) and assigned OMB No. 0581-0178 (Generic Vegetable and Specialty Crops). No changes in those requirements as a result of this action are necessary. Should any changes become necessary, they would be submitted to OMB for approval.

This rule will not impose any additional reporting or recordkeeping requirements on either small or large potato handlers and importers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. In addition, USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

Further, the Committee's meeting was widely publicized throughout the Colorado Area No. 2 potato industry and all interested persons were invited to attend the meeting and participate in Committee deliberations. Like all Committee

meetings, the December 20, 2012, meeting was a public meeting and all entities, both large and small, were able to express their views on this issue.

Comments on the interim rule were required to be received on or before August 13, 2013. No comments were received. Therefore, for the reasons given in the interim rule, we are adopting the interim rule as a final rule, without change.

To view the interim rule, go to:

<http://www.regulations.gov/#!documentDetail;D=AMS-FV-13-0001-0001>.

This action also affirms information contained in the interim rule concerning Executive Orders 12866 and 12988, the Paperwork Reduction Act (44 U.S.C. Chapter 35), and the E-Gov Act (44 U.S.C. 101).

In accordance with section 8e of the Act, the United States Trade Representative has concurred with the issuance of this rule.

After consideration of all relevant material presented, it is found that finalizing the interim rule, without change, as published in the **Federal Register** (78 FR 35743, June 14, 2013) will tend to effectuate the declared policy of the Act.

List of Subjects

7 CFR Part 948

Marketing agreements, Potatoes, Reporting and recordkeeping requirements.

Accordingly, the interim rule that amended 7 CFR part 948 and that was published at 78 FR 35743 on June 14, 2013, is adopted as a final rule, without change.

Dated: November 18, 2013

Rex A. Barnes
Associate Administrator
Agricultural Marketing Service

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